Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Delete, Delete, Delete	)	GN Docket No. 25-133
	)	
	)	

REPLY COMMENTS OF FREE PRESS

Free Press submits these reply comments in response to the Federal Communications Commission's (Commission or FCC) vague and broad request for comment on FCC rules the agency might hurriedly eliminate.[1] This reply: (1) briefly voices Free Press's opposition to some of the commenters' proposals; and (2) reminds the Commission that the Administrative Procedure Act (APA) requires separate proceedings with notice and opportunities for comment before repealing any such rule.

I. FREE PRESS OPPOSES SEVERAL PROPOSED REGULATORY ROLLBACKS IDENTIFIED IN THE COMMENTS.

The Commission opened the door for any deregulatory suggestion with virtually no limit, and industry came calling. Commenters ranged from suggesting discrete, singular changes, to large swaths of revisions over a number of subject areas.[2] Several commenters advocated for

[1] *In re: Delete, Delete, Delete*, Public Notice, GN Docket No. 25-133, DA 25-219 (rel. Mar. 12, 2025) [hereinafter *Public Notice*].

[2] *Compare* Comments of Pixxel Space Technologies, Inc., GN Docket No. 25-133 (filed Apr. 11, 2025) (requesting that the Commission remove its satellite surety bond requirement), *with* Comments of CTIA, GN Docket No. 25-133 (filed Apr. 11, 2025) (identifying twenty-one pages of proposed actions). Unless otherwise stated, all comments were filed in GN Docket No. 25-133 on April 11, 2025.

harmful changes that Free Press would oppose, including: getting rid of broadcast ownership caps,[3] stopping the collection of workforce Equal Employment Opportunity information from licensed broadcasters,[4] reclassifying broadband internet service under Title I,[5] narrowing or removing FCC digital discrimination rules required by Congress,[6] reducing broadband label requirements,[7] and eliminating truth-in-billing rules.[8] Free Press has explained publicly and to the Commission why these regulations are important.[9] They protect consumers, promote competition and viewpoint

[3] *See* Comments of the National Association of Broadcasters at 7–14; Comments of Nexstar Media Inc. at 11–15; Comments of Sinclair, Inc. at 7–13.

[4] *See* Comments of the Heritage Foundation at 2–3; Comments of the Rural Wireless Association, Inc. at 4–5; Comments of the U.S. Chamber of Commerce at 6.

[5] *See* Comments of the Heritage Foundation at 3.

[6] *See* Comments of ACA Connects at 8–10; Comments of NTCA – the Rural Broadband Association at 8–10.

[7] *See* Comments of NCTA – the Internet & Television Association at 13; Comments of ACA Connects at 11–12; Comments of CTIA at A-4.

[8] *See* Comments of NTCA – the Rural Broadband Association at 10; Comments of ACA Connects at 10–11.

[9] *See, e.g.*, Brief for Common Cause, Free Press, Future of Music Coalition, musicFirst Coalition, NABET-CWA, & United Church of Christ Office of Communication, Inc. as Amici Curiae Supporting Respondents, *Zimmer Radio of Mid-Missouri Inc. v. FCC* (Nos. 24-1380, 24-1480, 24-1493, 24-1516) (8th Cir. Sept. 20, 2024) (broadcast ownership caps); *To Better Track Diversity in Broadcasting, the FCC Restores Collection of Demographic Data from Radio and TV Licensees*, Free Press (Feb. 23, 2024), https://www.freepress.net/news/better-track-diversity-broadcasting-fcc-restores-collection-demographic-data-radio-and-tv (EEO data collection from broadcasters); Comments of Free Press, WC Docket No. 23-320 (filed Dec. 14, 2023) (supporting Title II classification of broadband internet service); Reply Comments of Free Press, WC Docket No. 23-320 (filed Jan. 17, 2024) (same); Comments of Free Press, GN Docket No. 22-69 (filed Feb. 21, 2023) (supporting the Commission's authority to adopt non-discrimination rules); Letter from Free Press, et. al, to Jessica Rosenworcel, Chairwoman, Fed. Comm'cns Comm'n (Nov. 1, 2022), https://www.freepress.net/sites/default/files/2022-11/coalition_letter_to_fcc_on_broadband_label.pdf (strongly supporting creating broadband consumer labels); Comments of Consumer Federation of America, Consumers Union, Free Press, Media Access Project, New America Foundation, & Public Knowledge, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36 (filed Oct. 13, 2009) (advocating for strong truth-in-billing rules); *see also* Comments of National Urban League at 2–4 (explaining in this proceeding the importance of digital discrimination and media ownership rules).

diversity, provide mechanisms to monitor whether the media reflects the community it serves, and work towards the Commission's statutory mission of connecting all communities to adequate communications facilities on just, reasonable, and non-discriminatory terms. But any potential exploration of these commenters' suggestions merits and even requires separate proceedings, in which commenters can focus at length on the intricacies of each rule being considered.

II. THE COMMISSION MUST OPEN OR CONTINUE SEPARATE PROCEEDINGS WITH OPPORTUNITY FOR COMMENT BEFORE REPEALING OR NARROWING ANY RULE.

Substantive discussion on the merits of the issues above is premature. In large part, the changes proposed by commenters require notice and comment, and the Public Notice initiating this docket does not conform to APA requirements for such changes. This section discusses the general requirements needed to modify or repeal an FCC rule, and explains why an exception to standard notice-and-comment rulemaking does not apply in this instance.

A. The APA Requires Notice and Comment Before Eliminating the Public Safeguards Identified by Various Commenters.

Before an agency engages in rulemaking, which includes "formulating, amending, or repealing a rule,"[10] the APA requires it to take three steps. First, it must give notice of the proposed rulemaking (NPRM).[11] That notice must contain some detail of the proposed change, "either the terms or the substance of the proposed rule or a description of the subjects and issues involved."[12] Second, the APA requires the agency to give interested parties "an opportunity to participate in the rule making" by submitting comments that the agency must consider and respond to.[13] Finally,

[10] 5 U.S.C. § 551(5).

[11] *Id.* § 553(b).

[12] *Id.* § 553(b)(3).

[13] *Id.* § 553(c).

once promulgating the rules, the agency must include a "concise general statement of [the rule's] basis and purpose."[14] Multiple commenters have already pointed out that separate notice-and-comment proceedings would need to take place before effecting many of the filed proposals,[15] which by and large amount to substantive rulemakings under the statutory definition.[16]

The Public Notice, which the Commission did not adopt by vote and which FCC staff did not adopt under identified delegated authority, would not suffice as notice of any proposed change. It was not published in the Federal Register, as typically would be required by the APA.[17] It is not an NPRM, nor is it a Notice of Inquiry. It also does not propose any rule, articulate any specific changes the agency seeks to make, identify any rules to cut, or even gesture to a particular substantive area within the Commission's oversight.[18] Rather, it solicits suggestions from filers on what these changes or removals should be, requesting comment on any "deregulatory initiative" that supposedly "would facilitate and encourage American firms' investment in modernizing their

[14] *Id.*

[15] *See, e.g.*, Comments of TechFreedom at 5 ("As inconvenient (and time consuming) as the APA may be, the FCC's ability to alter its public-facing rules is limited."); Comments of United Church of Christ Media Justice Ministry at 2 n.13; Comments of the Lifeline Coalition at 1; Comments of the Satellite Industry Association at 1–2 ("While we understand that there are procedures under which the Commission may consider rule changes without describing those potential rule changes in advance (e.g., without a notice of proposed rulemaking published in the *Federal Register*), those procedures require 'good cause,' existing only in narrow circumstances . . . , and satellite regulation is complex and warrants a robust rulemaking process (*e.g.*, the issuance of potentially multiple notices of proposed rulemaking), consistent with the Commission's obligation under the Administrative Procedure Act and more general principles of due process.").

[16] *See, e.g.*, Comments of ACA Connects at 10 (asking the Commission to "start from scratch" and adopt different digital discrimination rules from its 2023 order); Comments of the Rural Wireless Association, Inc. at 4–5 (requesting elimination of 47 C.F.R. § 1.815).

[17] 5 U.S.C. § 553(b).

[18] Indeed, the sheer range of topics covered by the submitted comments betrays the notion that the Public Notice contained any limiting principle or particular focus.

networks, developing infrastructure, and offering innovative and advanced capabilities."[19] To construe the Public Notice here as proper notice under the APA would turn the requirement on its head.

The Public Notice is quite openly a fishing expedition in response to President Trump's myriad executive orders on widescale deregulation, and not a proposal of any sort. Any action, if any, taken in response to commenters' proposals would require the Commission to first comply with the APA and FCC rules by providing proper notice and opportunity to comment on specific changes it is considering.

B. The Good Cause Exception Does Not Apply.

President Trump has proclaimed that agency heads "shall finalize rules without notice and comment, where doing so is consistent with the 'good cause' exception in the Administrative Procedure Act," but that exception would not apply to most of the proposals made in the docket.[20] The good cause exception permits an agency to bypass the typical notice-and-comment procedure when "the agency for good cause finds . . . that the notice and public procedure thereon are impracticable, unnecessary, or contrary to public interest."[21] Contrary to President Trump's conclusory assertion that "[r]etaining and enforcing facially unlawful regulations is clearly contrary to the public interest" and that notice and comment is "'unnecessary' where repeal is

[19] *Public Notice* at 1.

[20] Presidential Memorandum on Directing the Repeal of Unlawful Regulations (Apr. 9, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations.

[21] 5 U.S.C. § 553(b)(B).

required as a matter of law to ensure consistency with a ruling of the United States Supreme Court,"[22] the drafters of the APA did not intend those terms to be read as such.[23]

Instead, courts and scholars have noted that the good cause exception in function boils down to three categories: "(1) emergencies; (2) contexts where prior notice would subvert the underlying statutory scheme; and (3) situations where Congress intends to waive Section 553's requirements."[24] But the changes proposed in the docket do not fall under any of these situations. They do not involve imminent threats to public safety that would require immediate action.[25] Nor

[22] Presidential Memorandum, *supra* note 20. Ironically enough, the logical conclusion of President Trump's instruction is that administrative agencies should aggressively determine whether rules and regulations not previously considered by reviewing courts are nonetheless "unnecessary . . . as a matter of law," all without the benefit of public comment, independent legal review, and other stakeholder input. Yet this sentiment would cut against the reasoning underlying the Supreme Court's determination in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), that such legal interpretations are ultimately and properly left to courts, and not the Executive Branch or agencies. That contradiction is particularly conspicuous in light of the Administration accusing the judiciary of trampling on the Executive Branch's power after several courts held that its actions likely violated the law. *Compare id.* at 386 ("The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. Whatever respect an Executive Branch interpretation was due, a judge certainly would not be bound to adopt the construction given by the head of a department. Otherwise, judicial judgment would not be independent at all.") (internal quotations and citations omitted), *with* JD Vance (@JDVance), X (Feb. 9, 2025, 10:13 AM), https://x.com/JDVance/status/1888607143030391287 (complaining that "Judges aren't allowed to control the executive's legitimate power" after several judges granted temporary restraining orders and a preliminary injunction against various executive actions).

[23] *See* Kyle Schneider, Note, *Judicial Review of Good Cause Determinations*, 73 Stan. L. Rev. 237, 244–45 (2021) (citing Administrative Procedure Act: Legislative History, 79th Cong., 1944–46, at 258 (1946)) (explaining that the legislative history of the APA indicates that "'[i]mpracticable' was meant to focus on the need for quick action; 'unnecessary referred to instances such as those involving a 'minor or merely technical amendment'; and 'contrary to the public interest' was designed to address circumstances in which requiring advance notice would prevent an agency from fulfilling its statutory duties").

[24] Jared P. Cole, Cong. Rsch. Serv. No. R44356, *The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action* 4–9 (2016).

[25] *Cf. Jifry v. FAA*, 370 F.3d 1174, 1178–80 (D.C. Cir. 2004) (finding the FAA had good cause to bypass notice and comment for rules on the revocation and suspension of pilot certificates on grounds of security concerns, in the wake of the September 11, 2001 attacks).

do they involve situations in which notice and comment would cause harm to either the public or the underlying statute's purpose.[26] And any suggestion of implicit waiver of APA requirements would be unconvincing—this category of cases involves the invocation of the exception where a congressional deadline to promulgate regulations are "very tight,"[27] but Free Press is not aware of any such deadlines applicable here.

While the Commission could attempt to read the exception broadly in an effort to argue that it applies, the good cause exception was intended to be quite narrow. The legislative history of the APA reveals that the exception was not to be used "as an escape clause."[28] Courts have recognized the narrowness of the exception.[29] This narrow construction is for good reason. Public participation in the rulemaking process is "axiomatic,"[30] and serves as a mechanism to ensure that agencies are held accountable to the communities they serve. Any future action from the Commission should respect the importance of such public input by recognizing that the proposals

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[26] *Cf. Mobil Oil. Corp. v. Dep't of Energy*, 728 F.2d 1477, 1492 (Temp. Emerg. Ct. App. 1983) (finding good cause where advance notice of price regulation during the 1970s oil crisis could have caused "price discrimination and other market dislocations").

[27] *Methodist Hosp. of Sacramento v. Shalala*, 38 F.3d 1225, 1236–37 (D.C. Cir. 1994); *cf. Petry v. Block*, 737 F.2d 1193, 1200–01 (D.C. Cir. 1984) (finding good cause where legislation imposed a sixty-day deadline for promulgating rules).

[28] Administrative Procedure Act: Legislative History, *supra* note 23, at 258.

[29] *Sorenson Commc'ns, Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) ("Our caselaw indicates we are to 'narrowly construe[ ] and 'reluctantly countenance[ ] the exception."); *see also Nat. Res. Def. Council v. NHTSA*, 894 F.3d 95, 113–14 (2d Cir. 2018); *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012); *N.J. Dep't of Envt'l Prot. v. EPA*, 626 F.2d 1038, 1046 (D.C. Cir. 1986) (calling the good-cause inquiry "meticulous and demanding").

[30] Ernest Gelhorn, *Public Participation in Administrative Proceedings*, 81 Yale L.J. 359, 369 (1972); *see also id.* at 398 (suggesting that proper noticing is important to the democratic institution and arguably a legal obligation where agency action has a significant impact on a large swath of the public).

in this docket would need to surmount a high bar even to test the good cause exception's exceedingly narrow applicability.

Finally, any review of the Commission's possible use of the exception would be (and should be) reviewed without deference. In *Sorenson v. FCC*, the D.C. Circuit reviewed the Commission's invocation of the good cause exception *de novo*.[31] The court reasoned that according any deference to the agency's decision "would run afoul of congressional intent," as "the agency has no interpretive authority over the APA."[32] Indeed, "the APA's text, structure, and objectives make clear that reviewing courts should give no deference to agency assertions of good cause."[33] Accordingly, the Commission should not and cannot use the exception as indiscriminately as President Trump's memorandum suggests.

III. CONCLUSION

The Commission can and should review its rules to ensure they are up-to-date. But this docket, prompted by President Trump's crude deregulatory push,[34] appears to be a brazen attempt to roll back consumer safeguards on a widespread scale for industry's convenience. To that effect, industry and other stakeholders have enthusiastically lined up with their wish lists on virtually anything and everything under FCC jurisdiction,[35] largely unwary of any potential process foul.

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[31] *Sorenson*, 755 F.3d at 706.

[32] *Id.*

[33] Schneider, *supra* note 23, at 269; *see also id.* at 270–71 (arguing that Section 706 of the APA instructs courts to review without deference agency invocations of good cause).

[34] *Public Notice* at 1; *see also* Exec. Order No. 14192, 90 Fed. Reg. 9065 (Jan. 31, 2025); Exec. Order No. 14219, 90 Fed. Reg. 10583 (Feb. 19, 2025).

[35] *See* Comments of TechFreedom at 3 ("It is not Christmas (or even Festivus). Unlike so many other commenters, we're not making a pilgrimage to the FCC mall to sit on Santa's lap to ask for the deregulatory equivalent of Air Jordans.").

This docket is simply not the place to put any of those proposals in motion. For the foregoing reasons, Free Press implores the Commission to abide by the APA moving forward.

Respectfully submitted,

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